

TOWN OF NATICK ZONING BOARD OF APPEALS

RULES AND REGULATIONS

These Rules and Regulations are adopted by the Zoning Board of Appeals of the Town of Natick under the authority of the General Laws of the Commonwealth of Massachusetts (“Mass. Gen. L.”), Chapter 40A, Section 12. These Rules and Regulations, as amended from time to time, become effective upon their filing with the Natick Town Clerk and supersede any Rules and Regulations previously filed with the Natick Town Clerk.

Please note that the Zoning Board of Appeals of the Town of Natick has adopted Comprehensive Permit Rules (the “40B Rules”) which establish procedures for applications under Mass. Gen. L., Chapter 40B, Sections 20-23. A copy of the 40B Rules is available at the Community Development Office.

1. GENERAL.

1.1 Powers of the Board. In accordance with Mass. Gen. L. c.40A, Section 14, and Article VI-E of the Town of Natick Zoning By-Laws (the “By-Laws”), the Zoning Board of Appeals of the Town of Natick (“the Board”) shall have the following powers:

- 1.) In accordance with Mass. Gen. L. c.40A, Section 8, to hear and decide appeals taken by any person aggrieved by reason of his or her inability to obtain a permit or enforcement action from the applicable official or by any person aggrieved by an order of the Building Commissioner, a Building Inspector, or any other administrative official in violation of any provision of Mass. Gen. L. c.40 or of the By-Laws;
- 2.) to hear and decide applications for special permits upon which the Board is empowered to act under the By-Laws, including without limitation applications for site plan approval and applications for comprehensive permits under Mass. Gen. L. c.40B; and
- 3.) to hear and decide petitions for variances as set forth in Mass. Gen. L. c.40A, Section 10.

1.2 Composition of the Board. In accordance with Mass. Gen. L. c.40A, Section 12, and Article VI-E of the By-Laws, the Board consists of five (5) regular and three (3) associate members. An associate member may sit as a voting member when designated by the chair in the case of absence, inability to act or conflict of interest on the part of any member of the Board, or in the event of a vacancy on the Board until such vacancy is filled in accordance with applicable law, in accordance with said Statute and Article. When unrecused members are not sitting on the panel as a voting member, they may remain at the Board table and participate in the discussion.

1.3 Officers; term limits. As authorized by Mass. Gen. L. c.40A, Section 12, the Board shall annually elect one (1) regular member to serve as chair and one (1) regular member to serve as clerk. The members may elect one (1) regular member to serve as vice-chair. No member may serve more than two (2) consecutive one-year terms as chair, provided that this rule may be waived by the Board for one (1) additional year under extraordinary circumstances, such as the

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unwillingness of any other member to chair the Board. The clerk shall ensure that records are kept, as required by state law, of the meetings and hearings conducted by the Board. In the clerk's absence, an acting clerk shall be appointed by the members present to ensure that the records are kept.

1.4 *References.* Any request for relief before the Board, whether an appeal described in Section 1.1 above, an application for a special permit, or an application for a comprehensive permit, or a petition for a variance, is referred to in these Rules and Regulations as an application. Each applicant for relief before the Board, regardless of the nature of the relief sought, is referred to in these Rules and Regulations as an applicant.

1.5 *Conflict between these rules and the local or state zoning laws.* It is intended that the By-Laws shall govern in all respects regarding these Rules and Regulations. In the event of any conflict between the provisions of these Rules and Regulations and the By-Laws, the By-Laws prevail. In the event of any conflict between any provision of these Rules and Regulations and the laws of the Commonwealth of Massachusetts, the laws of the Commonwealth of Massachusetts shall prevail.

2. APPLICATIONS.

2.1 *Form of application.* Each application for action by the Board shall be made on the official form and pursuant to the instructions thereto which are available from the Town of Natick Community Development Office (the "Community Development Office"). Staff members of the Community Development Office are available to answer questions about forms and procedures. Applicants are not required to be represented by legal counsel. If applicants are represented by legal counsel, they are encouraged to review the contents of their application with their legal counsel, but each applicant is responsible for ensuring that all relevant boxes on the form are completed and all information required by the application has been supplied.

2.2 *Time for filing applications.* In accordance with Mass. Gen. L. c.40A, Section 15, any appeal to the Board must be filed within thirty (30) calendar days from the date of the order or decision being appealed. Other applications (e.g., applications for special permits including without limitation for site plan approval, applications for comprehensive permits, or petitions for variances) may be filed at any time.

2.3 *Authority of applicant.* Any application brought by anyone other than the record owner of the property affected shall provide the name and address of the record owner and explain the applicant's relationship to the owner (e.g., lessee, holder of an option to purchase, attorney). The application shall include evidence satisfactory to the Board of the record holder's consent to the application being filed and heard.

2.4 *Materials that shall be filed with the application.* Every application shall be accompanied by the materials specified in the Application Checklist available from the Community Development Office. These mandatory materials may include (without limitation) certified plot

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plans of the site, elevation plans, topographical plans, schematic plans, blueprints and drawings. Nothing in this provision shall prevent the Board from requiring an applicant to submit further information to assist the Board in conducting a hearing and/or in arriving at a decision upon an application.

2.5 *Inadequate plans or forms.* The Board may in its discretion, consistent with the laws of the Commonwealth of Massachusetts and the By-Laws, reject any application as inadequate and may dismiss, with or without prejudice, any application for the failure to include therewith adequate plans and other such supporting documentation or to complete the application form. The Board may also ask the applicant to supplement the submission with additional information.

2.6 *Other materials that can be filed with applications.* Applicants are encouraged to provide the Board with any other pertinent materials which may assist the Board in carrying out its duties. Such pertinent materials may include (without limitation) letters from abutters and other neighbors, photographs of the site and neighborhood, analysis of the neighborhood's character (e.g., average setback, lot size, house size), written narratives, arguments and briefs, as well as requests for particular findings, orders, or decisions.

2.7 *Mechanism for filing accompanying materials.* All mandatory accompanying materials shall be filed in ten (10) copies and submitted to the Community Development Office at the time of filing the official application. Unless otherwise provided by the Massachusetts General Laws or the By-Laws, voluntary accompanying materials may be filed before the close of the hearing, but applicants are strongly encouraged to file such materials at least seven (7) calendar days before the hearing. Original photographs submitted to the Board will be filed by the Board and retained in the Community Development Office records.

2.8 *Filing fees.* Each application, unless submitted by a duly-authorized Town officer or employee on behalf of a board, commission, or other agency of the Town, shall be accompanied by a non-refundable filing fee. The fees are set by the Board and may change from time to time. A current fee schedule shall be available at the Community Development Office.

2.9 *Withdrawal of applications.*

2.9.1. *Prior to the public hearing.* Any petition for a variance or an application for a special permit which has been transmitted to the Board may be withdrawn, without prejudice to the applicant, prior to the publication of the notice of a public hearing thereon, but thereafter may be withdrawn without prejudice only with the approval of the Board. The applicant shall submit a letter in writing requesting the withdrawal and stating the reason.

The Board may, in its discretion, permit an application to be withdrawn as follows:

2.9.2. *At or during the public hearing.* During the public hearing, an applicant may ask the Board to permit withdrawal of the application. The Board may, in its discretion, allow withdrawal of the application with or without prejudice.

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2.9.3. *After the close of the public hearing or during Board deliberations.* After the close of the public hearing or during Board deliberations, any request to withdraw the application will be granted by the Board only with prejudice. Such withdrawal will constitute unfavorable action on the part of the Board within the meaning of Mass. Gen. L. c. 40A, Section 16 (on repetitive petitions).

3. HEARING ASSIGNMENT AND NOTICE.

3.1 *Assignment for hearing.* Once an application is complete, it is assigned for hearing at a date and time set by the Board. The Board shall endeavor to hold hearings at least once per month. When an individual hearing cannot be completed in one session, the chair will announce the continued date and time during the public hearing.

3.2 *Notice of hearing.* The Board shall cause a notice of the hearing time and place and of the general subject matter, sufficient for identification, to be published in a newspaper of general circulation in the Town of Natick once in each of two (2) successive weeks, with the first publication not less than fourteen (14) days before the day of the hearing; and to be posted in the Natick Town Hall for a period of not less than fourteen (14) days before the day of hearing. Notice shall also be sent by mail, postage prepaid, to: (a) the applicant and (if different) the owner of the property affected; (b) the owners of all abutting property; (c) the owners of land directly opposite on any public or private street or way; (d) the owners of abutting property to abutting property within three hundred (300) feet of the property line, all as they appear on the most recent applicable tax list and notwithstanding that the land is located in another city or town. Notice shall also be delivered to the Planning Board of the Town of Natick, any other Town boards and parties deemed by the Community Development Office to be interested in the subject matter of the hearing, and the planning boards of adjacent towns.

4. HEARINGS.

4.1 *Hearings open to public.* All hearings conducted by the Board are open to the public and conducted in accordance with Mass. Gen. L. c.39, Section 23A through 23D (the “Massachusetts Open Meeting Law”).

4.2 *Presiding member.* Unless otherwise provided by law, the chair shall preside over all Board hearings, unless the chair is absent or recused. In such an absence or recusal, the vice-chair shall serve as acting chair. In the absence or recusal of both the chair and vice-chair (or if the Board has not elected a vice chair), the members shall appoint a regular member to serve as acting chair. The chair or acting chair may administer oaths, summon witnesses, and call for the production of documents. The chair shall appoint the five (5) voting members of the panel at the start of the hearing and may appoint one or more associate members to the panel if a regular member of the Board is absent or otherwise unable to act pursuant to Section 1.2 hereof.

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4.3 Attendance at hearings. An applicant must either be present at the hearing or represented by an authorized person. If no one appears at the hearing, the Board shall, in its discretion: (a) proceed with the hearing; or (b) continue the hearing.

4.4 Conduct of hearings. The Board shall determine the order of presentation and all other conduct of a hearing. The chair generally will ask the clerk or, in the absence or recusal of the clerk, any member designated by the chair as acting clerk, to read the record. The chair will then generally ask the applicant to present the applicant's entire case, after which members of the Board may direct questions to the applicant and/or other persons and may invite persons opposing or favoring the application to speak or present evidence and arguments. When the chair determines that further public comment is not forthcoming or is merely repetitive, the chair will close the public portion of the hearing, and no further public comment will be allowed, except in response to a direct question put by a Board member to a particular person. The chair shall have the right to impose time limits on speakers at a particular hearing, which time limits shall be reasonable and uniformly applied within a particular hearing.

4.5 Legal duty. The applicant has the legal duty to make a true and complete presentation of the case, to offer evidence on each of the pertinent legal requirements, and to provide all the relevant facts and documents necessary to a fair presentation of the issues for decision by the Board. Opponents are under a similar legal duty to present their cases truthfully and completely. Pursuant to Mass. Gen. L. c.40A, Section 15, the Board has the power to subpoena witnesses, take sworn testimony, and compel production of documents.

4.6 Quorum. Three (3) members, whether regular or associate, must be present in person to constitute a quorum and hear the matters designated by state law. If a quorum of the Board is not present at any scheduled hearing, those members present, constitute a sufficient quorum to vote to open and continue the hearing only. Applicants may request that the Board to continue a hearing to another date when a full five (5) member panel is available. Applicants may also agree that the hearing proceed with four (4) members of the Board in attendance. Votes to continue and other administrative votes require a simple majority of those present.

The required quorum is distinct from the number of concurring votes required to grant relief. See Section 6.2 below.

4.7 Continuance. The Board may continue any matter to another specified time, provided that notice of the date, time, and place of the continued hearing and its subject matter is announced at the hearing being continued.

5. CONSULTING FEES.

5.1 Payment of consulting fees. As provided in Mass. Gen. L. c.44, Section 53G, the Board may impose a reasonable fee on any applicant for a special permit, variance, or other zoning relief under the Zoning By-Laws, to pay for the employment of an outside consultant to assist the

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Board in reviewing the application. These consulting fees are imposed in addition to any other fees assessed under these rules and regulations.

5.2 Procedure. Whenever the Board determines that it needs the services of an outside consultant, it will so notify the applicant. Once it designates an outside consultant, it will inform the applicant in writing, giving the consultant's name, an estimate of the consultant's total fee, and the amount of the initial deposit due from the applicant.

5.2.1 Means of appeal The applicant may appeal the Board's selection of a consultant to the Board of Selectmen, by sending the Board of Selectmen a written request for review of the Board's designation within fourteen (14) days of the applicant's receipt of the designation.

5.2.2 Grounds for appeal Appeals are limited to claims that the consultant has a conflict of interest or does not possess the minimum qualifications set forth in Mass. Gen. L. c.44, Section 53G. The required time limits for the Board to act on the underlying application are extended by the duration of the appeal.

5.2.3 Delivery of initial deposit. If the applicant does not file an appeal within the time period specified above, the applicant shall deliver the initial deposit, in the form of a certified or bank check, to the Community Development Office for deposit with the Natick Town Treasurer, within the time limits set in the designation letter.

5.2.4 Amount of deposit. The initial deposit amount may be any amount up to the estimated total of the consultant's fee. If the deposit amount is less than the estimated total, the Board may ask the applicant for supplemental deposits, which shall be due and payable within fourteen (14) days of the request.

5.2.5 Grounds for dismissal. Failure to pay the initial or any supplemental deposit shall constitute grounds for the Board to deny the special permit, variance, or other requested zoning relief.

5.2.6 Return of unused funds. The Town Treasurer will pay the consultant's bills, as approved by the Board, from the funds on deposit, and will return any interest earned by the deposited funds and any funds remaining unused at the completion of the applicant's project, upon direction by the Board.

6. DECISIONS.

6.1 Recommittal and rehearing. If the Board determines, at any time after the public hearing closes, that an application or the evidence submitted to support that application fails to conform in all respects with the requirements of state law and/or the By-Laws or fails to entitle the applicant to the requested relief, it may, prior to making its decision, and subject to applicable time limitations set forth in Mass. Gen. L. c.40A, advise the applicant of its determination and provide the applicant an opportunity to revise the application or to submit additional materials

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into evidence. If the revision or additional evidence involves a substantial change from the original application or from the evidence adduced at the hearing, the Board will hold a new hearing thereon, notice of which shall be given as with an original application, before making its final decision.

6.2 *Required vote of the Board.* The concurring vote of a supermajority (i.e., four (4) members) is necessary to grant a special permit under the Zoning By-Laws; to grant a variance in the application of the Zoning By-Laws; or to reverse an order or decision of the Building Commissioner or a Building Inspector. Administrative matters, votes to reconsider, votes to adjourn, and votes to continue hearings are decided by a simple majority of the members present.

6.3 *Time limits.* The time limits for the Board's decisions shall be in accordance with state law and the By-Laws. If necessary, when matters are continued, the Board will ask the applicant to sign and submit a document extending the time limits.

6.4 *Filing of decisions.* The decision of the Board on each application, stating the reasons for the decision and the vote of each member upon each question, must be filed in the office of the Town Clerk within fourteen (14) days. The decision shall be a public record. Copies shall be furnished to the administrative officer whose decision is appealed (in the case of an appeal), to the Building Commissioner or Building Inspector in each matter in which he maintains a file, to the applicant, and to the owner of the land (if the owner is not the applicant). Further, a copy is retained in the permanent records of the Board and, for a variance or special permit, a copy of the decision and all plans referred to therein are filed with the Community Development Office.

6.5 *Notice of decision; Recording.* Notice of each decision of the Board, setting forth the date on which the decision was filed in the office of the Town Clerk and summarizing the action of the Board, will be mailed promptly to every person or entity to whom notice of the hearing is required to be sent by Mass. Gen. L. c.40A, Section 11 and by Section 3.2 above, and to every person present at the hearing who asks for a copy of the decision and provides an address to which the notice should be sent. Each notice shall specify that appeals, if any, must be made pursuant to Mass. Gen. L. c.40A, Section 17, and must be filed within twenty (20) days after the decision is filed in the office of the Town Clerk. No variance or special permit, or any extension, modification, or renewal thereof, shall take effect until a copy of the written decision (which must bear the Town Clerk's certification that twenty (20) days have elapsed and no appeal has been filed or that, if such appeal has been filed, that it has been dismissed or denied) is duly recorded in Middlesex County Southern District Registry of Deeds or filed with the Middlesex South Registry District of the Land Court and indexed in the grantor index under the name of the record owner or is registered with the owner's certificate of title, as applicable. Each such decision shall be recorded promptly after expiration of the period for appeal set by law.

6.6 *Limited or conditional variances and special permits.* When the Board decides that a variance or special permit may be granted if it is limited in time or use or is conditioned upon compliance with regulations to be made and amended from time to time thereafter and specially designed to safeguard the zoning district and the Town, it shall impose such limitations and

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conditions by setting them forth in its decision, causing them to be made a part of the building permit to be issued, and issuing the landowner a notice containing the landowner's name and address, identifying the land affected, and stating that a limited or conditional variance or special permit has been granted as is set forth in the decision of the Board on file in the office of the Town Clerk.

6.7 *Lapse of decisions.* The rights authorized by the Board's orders and decisions shall lapse as follows:

6.7.1 *Lapse of variance.* If the rights authorized by a variance are not exercised within one (1) year of the date of grant of such variance such rights shall lapse; provided, however, that the Board in its discretion and upon written application by the grantee of such rights may extend the time for exercise of such rights for a period not to exceed six (6) months; and provided, further, that the application for such extension is filed with such permit granting authority prior to the expiration of such one (1) year period. If the Board does not grant such extension within thirty (30) days of the date of application therefor, and upon the expiration of the original one (1) year period, such rights may be reestablished only after notice and a new hearing pursuant to the provisions of Mass. Gen. L. c.40A, Section 10.

6.7.2 *Lapse of other rights.* If the rights granted by the Board, other than variances, are not used or exercised, they shall lapse in accordance with the time limits set forth in Mass. Gen. L. c.40A, the By-Laws or as otherwise provided by law.

6.8 *Amendment, modification, or correction of orders and decisions.* The Board may amend, modify, or revoke its decisions as follows:

6.8.1 *Before final action* At any time before its decision is filed with the Town Clerk, the Board may modify or amend that decision, provided that the statutory time limits for taking final action are met.

6.8.2 *After final action but before the appeal period has run.* At any time prior to the expiration of twenty (20) days after the decision is filed with the Town Clerk, the Board may modify or amend its decision, provided that notice of the modification or amendment is given to all persons to whom notice of the hearing was required to be sent.

6.8.3 *At any time, to correct inadvertent clerical errors.* At any time the Board may correct an inadvertent or clerical error or omission in a decision, provided that the correction does not constitute a reversal of a conscious decision or grant different relief.

7. COMMUNICATIONS WITH THE BOARD.

7.1 *Written communications only.* Other than at a hearing or as e-mail, all communications to the Board must be in writing and submitted to the Community Development Office for

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distribution to the Board members and filing in the permanent files. The Board may require that any such communication be submitted in ten (10) copies.

7.2 *Electronic communications.* Communications by e-mail should be sent only to the Community Development Office for distribution to the Board members and filing as a public record.

7.3 *No ex parte communications.* No applicant or interested party may hold an ex parte discussion (i.e., a discussion outside the forum of the public hearing) of any adjudicatory matter pending before the Board with a sitting Board member. Subject to the foregoing sentence, members prior to the hearing or before a continued hearing may make site visits to the property and the neighborhood in question.

7.4 *Submissions by Parties other than Applicant in advance of hearing.* Persons who are not applicants or petitioners may submit materials in connection with a pending application at any time prior to the close of the hearing, but interested parties are strongly encouraged to submit such materials at least seven (7) calendar days in advance of the hearing, so that the applicant, other interested parties and Board members are insured of sufficient time to review the submissions.

8. *Waiver by the Board.* The Board may, for any particular application, waive compliance with any portion of these rules and regulations, but only if it finds that doing so (a) is in the public interest because of demonstrated substantial hardship or some other reasonable basis; (b) does not impair its ability to reach a fair decision; and (c) would be fair to both the applicant seeking the waiver and the other applicants who did not or will not seek waivers.

9. *Board Records.* Records of the Board shall, at reasonable times, be made available to the public and copies of the same may be obtained at the then current cost established by the Board in accordance with applicable law or regulation.

10. *Amendment.* This Board may at any time amend or modify these Rules and Regulations with the concurring vote of a simple majority of the members present, and the amendment or modification shall take effect when a copy is filed with the Town Clerk.

Adopted by vote of the Zoning Board of Appeals of the Town of Natick on _____, 2008. Filed with Town Clerk on November____, 2008.